

ORIGINAL

ANDERSON, JULIAN & HULL LLP
C. W. Moore Plaza
250 S. 5th Street, Suite 700
P. O. Box 7426
Boise, ID 83707-7426
Telephone: (208) 344-5800
Facsimile: (208) 344-5510
Justin P. Aylsworth - ISB No.: 5713

Attorneys for Creditors

U.S. COURTS
01 FEB -9 PM 2:56

REC'D
CANTERBURY BURKE
CLERK IDAHO

FILED
RCPT # 71045

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

In Re:

CASCADE BUILDERS-DEVELOPERS,
INC.,

Debtor.

Bankruptcy Case No.: 98-476

MOTION FOR RELIEF FROM
AUTOMATIC STAY, NOTICE OF
REQUIREMENTS, AND NOTICE OF
HEARING

COME NOW, John Keys, an individual, and Boise State University, a political subdivision of the State of Idaho, by and through their attorney of record, Anderson, Julian & Hull, LLP, and hereby respectfully move the Court, pursuant to 11 U.S.C. § 362(d), for relief from the Automatic Stay with regard to monies available from Cascade Builders-Developers, Inc.'s, insurance carrier, so that the subrogation action pending in the District Court of the Fourth Judicial District of the State of the Idaho, in and for the County of Ada, Case No. CVPI99005100, may proceed.

1. That on or about September of 1997, Cascade Builders-Developers, Inc., contracted with Boise State University to repair a soffit structure on the south side of the building at the swimming pool on the Boise State University campus. Cascade Builders-Developers, Inc., removed the access gates to the south and north patio in order to get two scissor lifts onto the patio to take out the old soffit. The two gates were hinged to the eight-foot brick wall

around the patio. Cascade Builders-Developers, Inc., removed the gates and fascia, taking out the bolts from the hinge plates to get through the opening to access the soffit with the scissor lifts. When Cascade Builders-Developers, Inc., removed the three bolt hinges, they subsequently failed to reattach the hinges in their original condition. Rather, when Cascade Builders-Developers, Inc., reattached the gates, they failed to utilize existing bolt and nut assembly, but instead used nails to reattach the gate to the brick wall.

2. That on September 27, 1997, John Keys, in his position as a kayak instructor, returned from a kayak class trip and attempted to relocate a kayak to the storage area, which entailed entering through the subject gate. Upon opening the gate, the nails substituted by Cascade Builders-Developers, Inc., failed, causing the gate to fall off of its hinges, striking John Keys. As a result of the incident, Mr. Keys suffered a strain in both wrists, right shoulder, right ankle, and a contusion to the right shin.
3. That at the time of the above-referenced incident, Boise State University was, in accord with the employer/employee relationship with John Keys, obligated, pursuant to Idaho Code § 72-101 *et seq.*, to provide worker's compensation benefits for the injuries sustained by Mr. Keys.
4. That on September 27, 1999, a Complaint and Demand for Jury Trial was filed in the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, designated case number CVPI9900510D, for purposes of attaining indemnification and/or reimbursement from Cascade Builders-

Developers, Inc., by and through its insurance company, pursuant to Idaho law.

5. That on or about February 18, 1998, Cascade Builders-Developers, Inc., filed for relief under Chapter 11 of the United States Bankruptcy Code as Bankruptcy Case number 98-476. Subsequently, on or about May 7, 1999, it was ordered that Cascade Builders-Developers, Inc.'s bankruptcy action be converted from Chapter 11 to Chapter 7.
6. That it is Mr. Keys' and Boise State University's position that they are entitled to an Order for Relief from the Automatic Stay for the limited purpose set forth above, in that the property of the estate involved will not be affected. The Automatic Stay need only be lifted for the limited purpose of pursuing the State Court action to collect all funds available from Cascade Builders-Developers, Inc.'s insurance company.

WHEREFORE, for the reasons stated, John Keys and Boise State University pray for an Order of this Court Lifting the Automatic Stay for the limited purpose of allowing them to proceed in the State Court action against the Cascade Builders-Developers, Inc., to attain all monies available from the Cascade Builders-Developers, Inc.'s insurance company.

DATED this 9th day of February , 2001.

ANDERSON, JULIAN & HULL LLP

By


Justin P. Aylsworth, Of the Firm
Attorneys for Creditors

NOTICE OF REQUIREMENTS OF L.B.R. 4001.2(d)(1) AND 11 U.S.C. § 362(e)

L.B.R. 4001.2(d)(1). YOU ARE HEREBY NOTIFIED that a party in interest may oppose the above Motion by filing and serving on the undersigned a written objection thereto at least five (5) days prior to the preliminary hearing. The objection must reasonably identify those matters contained in the Motion which are to be at issue, and any other basis for opposition to the Motion. It shall be the responsibility of a party opposing the above Motion to see that the preliminary hearing required under 11 U.S.C. § 362(e), as described below, is set by the calendar clerk of the Bankruptcy Court with notice of such hearing to the undersigned.

11 U.S.C. § 362(e). YOU ARE FURTHER NOTIFIED that pursuant to 11 U.S.C. § 362(e) the stay of 11 U.S.C. § 362(a) will vacate thirty-three (33) days from the date of service of this Motion unless the Court, after notice and a preliminary hearing, and within said thirty-three day period, orders the stay continued in effect pending a final hearing and determination under 11 U.S.C. § 362(d). You are further notified that in the event an Order continuing the stay is not entered within thirty-three (33) days from the date this Motion is served, that the Court may enter an Order without further notice to you annulling the stay as requested in this Motion. Any hearing must be upon notice to the undersigned and set by the calendar clerk of the Bankruptcy Court.

NOTICE OF HEARING

PLEASE TAKE NOTICE that the undersigned will bring on for hearing Creditors' Motion for Relief from Automatic Stay before the above-entitled Court held at Boise - Bankruptcy Court, 550 West Fort Street, MSC 042, on Monday, February 26, 2001, at the hour of 1:30 o'clock p.m., or as soon thereafter as counsel can be heard.

DATED this 9th day of February, 2001.

ANDERSON, JULIAN & HULL LLP

By


Justin P. Aylsworth, Of the Firm
Attorneys for Creditors

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of February, 2001, I served a true and correct copy of the foregoing MOTION FOR RELIEF FROM AUTOMATIC STAY, NOTICE OF REQUIREMENTS, AND NOTICE OF HEARING by delivering the same to each of the following, by the method indicated below, addressed as follows:

Cascade Builders-Developers, Inc.
2017 North Midland Boulevard
Nampa, Idaho 83651

☒ U.S. Mail, postage prepaid
☐ Hand-Delivered
☐ Overnight Mail
☐ Facsimile

D. Blair Clark
Ringert Clark Chartered
455 South 3rd
P. O. Box 2773
Boise, Idaho 83701

☒ U.S. Mail, postage prepaid
☐ Hand-Delivered
☐ Overnight Mail
☐ Facsimile

Kimbell D. Gourley
Eberle, Berlin, Kading, Turnbow &
McKlveen
300 North 6th, 2nd Floor
P. O. Box 1368
Boise, Idaho 83701

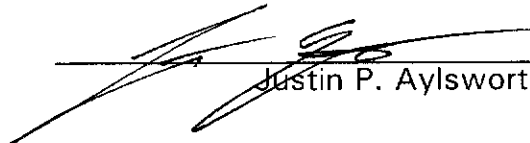
☒ U.S. Mail, postage prepaid
☐ Hand-Delivered
☐ Overnight Mail
☐ Facsimile

Richard E. Crawforth
2404 Bank Drive, #312
Boise, Idaho 83705

☒ U.S. Mail, postage prepaid
☐ Hand-Delivered
☐ Overnight Mail
☐ Facsimile

Office of the U.S. Trustee
P. O. Box 110
Boise, Idaho 83701

☒ U.S. Mail, postage prepaid
☐ Hand-Delivered
☐ Overnight Mail
☐ Facsimile


Justin P. Aylsworth